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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,370	02/11/2005	Gregory Thomas Flitton	040857/282241	1070
826	7590	06/26/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			NGUYEN, TUAN HOANG	
			ART UNIT	PAPER NUMBER
			2618	

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/506,370

Applicant(s)

FLITTON, GREGORY THOMAS

Examiner

Tuan H. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>09/02/2004</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 09/02/2004 has been considered by Examiner and made of record in the application file.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, 11-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mount et al (US PAT. 6,272,337 hereinafter, "Mount") in view of Malmivirta et al. (WO 99/63764 hereinafter, "Malmivirta").

Consider claim 1, Mount teaches testing a mobile telephone terminal comprising the steps of: transmitting to the terminal on a downlink a predetermined data pattern which the terminal will recognize and which will prompt the terminal to transmit an access request on an uplink (see fig. 1A col. 2 line 52 through col. 3 line 13).

Mount does not explicitly show that receiving the access request and analyzing the access request to assess the performance of the terminal without responding to the terminal.

In the same field of endeavor, Malmivirta teaches receiving the access request and analyzing the access request to assess the performance of the terminal without responding to the terminal (page 11 lines 16-32).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, receiving the access request and analyzing the access request to assess the performance of the terminal without responding to the terminal, as taught by Malmivirta, in order to provide testing a mobile communications system includes a controller and a plurality of mobile units.

Consider claim 2, Mount further teaches multiple predetermined data patterns are provided for testing the terminal under different operating conditions, each data pattern prompting a different response from the terminal in transmitting an access request (col. 4 line 54 through col. 5 line 6).

Consider claim 3, Mount further teaches multiple predetermined data patterns are such that they each prompt the terminal to transmit an access request at a different power level (col. 4 line 54 through col. 5 line 6).

Consider claim 4, Mount further teaches multiple predetermined data patterns are such that they each specify a different maximum number of times the terminal should send an access request if the terminal receives a response to none of them (col. 7 lines 15-23).

Consider claim 5, Mount further teaches predetermined data pattern is transmitted multiple times at different power levels and the response of the terminal is analyzed to determine a threshold at which the terminal fails to transmit an access request (col. 4 line 54 through col. 5 line 6).

Consider claim 6, Mount further teaches predetermined data pattern is transmitted to the terminal on a cable connection (col. 3 lines 41-47).

Consider claim 7, Mount further teaches predetermined data pattern is transmitted to the terminal over an air interface (col. 6 lines 9-17).

Consider claim 8, Mount further teaches the air interface is screened from other signals (col. 6 lines 9-17).

Consider claim 11, Mount teaches testing a mobile telephone terminal, the test being structured and arranged to transmit a predetermined data pattern on a downlink to prompt a response from the terminal in the form of an access request on an uplink (see fig. 1A col. 2 line 52 through col. 3 line 13).

Mount does not explicitly show that the test being structured and arranged to analyze the access request and produce a test result without further responding to the terminal.

In the same field of endeavor, Malmivirta teaches the test being structured and arranged to analyze the access request and produce a test result without further responding to the terminal (page 11 lines 16-32).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, the test being structured and arranged to analyze the access request and produce a test result without further responding to the terminal, as taught by Malmivirta, in order to provide testing a mobile communications system includes a controller and a plurality of mobile units.

Consider claim 12, Mount further teaches generates multiple predetermined data patterns for testing the terminal under different operating conditions of transmission power level and/or maximum number of access requests to be transmitted if there is no response to any of them (col. 4 line 54 through col. 5 line 6 and col. 7 lines 15-23).

Consider claim 13, Mount further teaches adapted to vary the power level at which the test transmits predetermined data pattern and to analyze the response to each from the terminal (col. 4 line 54 through col. 5 line 6).

Consider claim 14, Mount further teaches connected to the terminal to transmit predetermined data pattern either by a cable connection or an air interface (col. 3 lines 41-47).

Consider claim 17, Mount teaches testing a mobile telephone terminal, the test comprising a memory to store a predetermined data pattern and a transmitter to transmit predetermined data pattern on a downlink to mobile telephone terminal in order to prompt a response from mobile telephone terminal in the form of an access request on an uplink to the test (see fig. 1A col. 2 line 52 through col. 3 line 13).

Mount does not explicitly show that a processor to analyze access request and produce a test result without responding to the access request on downlink.

In the same field of endeavor, Malmivirta teaches a processor to analyze access request and produce a test result without responding to the access request on downlink (page 11 lines 16-32).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, the test being structured and arranged to analyze the access request and produce a test result without further responding to the terminal,

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as taught by Malmivirta, in order to provide testing a mobile communications system includes a controller and a plurality of mobile units.

5. Claims 9-10 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mount et al (US PAT. 6,272,337 hereinafter, "Mount") in view of Malmivirta et al. (WO 99/63764 hereinafter, "Malmivirta") as applied to claims above, and further in view of Nelson, Jr. et al. (U.S PUB. 2003/0028643 hereinafter, "Nelson").

Consider claims 9 and 15, Mount and Malmivirta, in combination, fails to disclose the access request is analyzed by a power measurement. However, Nelson teaches the access request is analyzed by a power measurement (page 1 [0008]). Therefore, it is obvious to one of ordinary skill in the art at the time the invention was made to incorporate the disclosing of Nelson into view of Mount and Malmivirta, in order to provide enhancing the utilization of resources in a wireless communication system.

Consider claims 10 and 16, Nelson further teaches the access request is analyzed by a modulation quality measurement (page 2 [0015] and [0016]).

### ***Conclusion***

6. Any response to this action should be mailed to:

Mail Stop\_\_\_\_\_ (Explanation, e.g., Amendment or After-final, etc.)



Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Facsimile responses should be faxed to:

(571) 273-8300

Hand-delivered responses should be brought to:

Customer Service Window

Randolph Building

401 Dulany Street

Alexandria, VA 22313

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan H. Nguyen whose telephone number is (571) 272-8329. The examiner can normally be reached on 8:00Am - 5:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Maung Nay A. can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information Consider the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan Nguyen  
Examiner  
Art Unit 2618

  
**NAY MAUNG**  
SUPERVISORY PATENT EXAMINER